

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 06-0111P

Income Tax

For the Fiscal Year ended March 31, 2005

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2;

The taxpayer protests the late penalty.

STATEMENT OF FACTS

The underpayment penalty was assessed for the filing of the corporate income tax return for the fiscal year ended March 31, 2005

The taxpayer incurred a significant gain from a real estate sale for the fourth quarter. The taxpayer had a significant loss from operations for the fiscal tax year. The resultant tax for the fiscal period was \$105,000. The only estimated tax payment was \$9,000 for the fourth quarter.

The taxpayer is an Indiana company.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer requests the penalty be abated as the State of Indiana does not have an annualized income tax statute. The taxpayer says that if Indiana did have an annualized income tax statute, there would not have been a penalty.

True, Indiana does not have an annualized income tax statute. However, Indiana does embrace substance over form in tax compliance. The taxpayer had \$105,000 in reportable income for the fiscal tax year. This income resulted from the real estate gain

in the fourth quarter. The taxpayer would have met its tax compliance duties if (1) the taxpayer paid an estimate equal to 100% of the prior year tax, which in this case was \$35,105, or (2) the taxpayer paid 80% of the current year tax, which in this case would be \$84,000. The taxpayer paid an estimated tax of \$9,000 which is well short of either threshold for abating the penalty.

The regulation which controls the application of penalty is 45 IAC 15-11-2(b) which states,

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer.

Negligence would result from a taxpayer's

carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations.

Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department finds the taxpayer was inattentive of tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer's penalty protest is denied.